

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION**

MARIA ALICIA CORDON,
Plaintiff,
v.
WORLD SAVINGS BANK, FSB, *et al.*
Defendants.

No. C 09-5333 SBA

ORDER

[Docket Nos. 14, 15]

10 On August 31, 2009, Plaintiff Maria Alicia Cordon (“Plaintiff”) filed the instant Complaint
11 in the Superior Court of the State of California in and for the County of Contra Costa. (See Docket
12 No. 1, Notice of Removal, Ex. A (“Complaint”)). Plaintiff brings the instant action against Golden
13 State Financing, LSI Title Company, Inc. and Wachovia Mortgage¹ (“Wachovia” or “Defendant”),
14 claiming numerous violations of state and federal laws that stem from the refinance of a home loan.
15 On November 12, 2009, Wachovia removed the action to federal court pursuant to 28 U.S.C. § 1331.
16 (Docket No. 1.) On December 18, 2009, Wachovia filed a Motion to Dismiss Plaintiff’s Complaint
17 (Docket No. 14) and a Motion to Strike Portions of Plaintiff’s Complaint (Docket No. 15). For the
18 reasons discussed below, the Court DENIES both of Wachovia’s motions without prejudice.

19 First, the Court is unable to adjudicate the instant motion to dismiss and motion to strike at
20 this juncture because a complete copy of the Complaint is not part of the Court file. Upon a review
21 of the Notice of Removal, the Court finds that Plaintiff's Complaint is incomplete. There are
22 numerous pages missing from the end of the Complaint that include at least three causes of action (at
23 issue in the instant motions) and Plaintiff's prayer for relief. Removing defendants are required to
24 "file in the district court of the United States for the district and division within which such action is
25 pending a notice of removal ..., together with a copy of all process, *pleadings*, and orders served
26 upon such defendant or defendants in such action." 28 U.S.C. § 1446(a) (emphasis added).

²⁸ ¹ Formerly known as Wachovia Mortgage, FSB and World Savings Bank, FSB, sued as “World Savings, FSB” and “Wachovia Mortgage.” (See Notice of Removal at 1:23-27.)

1 Wachovia's failure to comply with the requirements of 28 U.S.C. § 1446(a) prevent this Court from
 2 properly adjudicating the instant motions.

3 *Second*, all parties are required to meet and confer before filing any motion with this court,
 4 and to certify that they have complied with this requirement. (Docket No. 17.) Wachovia has failed
 5 to do so. This requirement is essential to the parties' representation that there is a dispute which
 6 requires the Court's resolution. Until such time as the parties have met and conferred to discuss the
 7 issues, it is premature to conclude that there exists a dispute necessitating the Court's intervention.
 8 The meet and confer requirement is essential to conserving the limited time and resources of the
 9 Court and the parties, by obviating the filing of unnecessary motions.

10 In the instant case, Wachovia moved to dismiss twenty-one of twenty-two causes of action
 11 contained in Plaintiff's Complaint. In her opposition, Plaintiff seeks to withdraw nine of her causes
 12 of action and asks leave of the Court to file an amended complaint. Plaintiff states that the
 13 underlying facts of the case have changed, including a loan modification, and she now desires to
 14 "narrow the scope of the lawsuit to far fewer issues." (Opp. at 10:18-19.) Had the parties met and
 15 conferred as required it appears the parties could have reached an agreement as to the nine causes of
 16 action which Plaintiff now seeks to withdraw as well as her desire to file an amended complaint.

17 Because the Court does not have a complete copy of the operative Complaint in this matter,
 18 and because Wachovia failed to certify that the parties have met and conferred on any substantive
 19 issues, the Court DENIES Wachovia's motions without prejudice.

20 Further, the Court notes that this matter is still early in the proceedings and a responsive
 21 pleading is yet to be filed. Plaintiff has stated that the underlying facts of the case have changed and
 22 she desires to file an amended complaint. Federal Rule of Civil Procedure 15(a)(2) provides that
 23 leave to amend shall be freely given "when justice so requires."

24 Accordingly,

25 **IT IS HEREBY ORDERED THAT:**

26 (1) Wachovia shall file an amended Notice of Removal that fully complies with 28
 27 U.S.C. § 1446(a) by April 5, 2010.
 28 (2) Wachovia's Motion to Dismiss Plaintiff's Complaint is DENIED without prejudice.

1 (3) Wachovia's Motion to Strike Portions of Plaintiff's Complaint is DENIED without
2 prejudice.
3 (4) Plaintiff shall file an amended complaint by April 9, 2010.
4 (5) The parties shall meet and confer in person or by telephone prior to filing any future
5 motions.

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7 IT IS SO ORDERED.

8 March 31, 2010


9 Saundra Brown Armstrong
United States District Judge

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